

method claimed in the present application. Amendment of the specification to include material incorporated by reference in the originally filed disclosure does not introduce new matter into the application. M.P.E.P. § 608.01(p).

Claims 67, 75, 77, 80 and 93 are amended herein to indicate that the oil blend consists essentially of microbial oil(s) that are enriched in DHA and ARA respectively, these enriched oils being essential to achieving the recited ratios of DHA, ARA, and EPA in the final blend. As taught in the specification, *inter alia* on page 5, microbial oils enriched in DHA or ARA and simultaneously poor in EPA are essential components which permit oil blends having the desired ratios of DHA:ARA:EPA to be prepared. Claims 67, 75-77, 92 and 94 are amended herein to expressly recite the desired ratios of these fatty acid residues. The desired ratios are supported throughout the specification and in originally filed claims 31 and 50. Claims 82-84 are amended to clarify the dependency of the claims, the subject matter of the dependent claims being fully supported throughout the specification. Applicant submits that the present amendments do not add any new matter to the subject application.

Statement Under 37 C.F.R. § 1.116

Amendment of the specification to include material that was incorporated by reference is made to comply with the requirement made in the Advisory Action of June 9, 1994. Applicant respectfully requests that this Amendment be entered under 37 C.F.R. § 1.116(a).

The claims are amended in response to the statement in the Advisory Action which indicated that certain claims might be allowable if the term "comprising" was replaced. These amendments are necessary to resolve outstanding issues in the prosecution, making the claims

allowable or putting them in better condition for appeal. The amendments were not earlier presented because the issue of the term "comprising" was first raised in the Advisory Action of June 9, 1994. The amendment to deal with this issue submitted herein is thus offered at the earliest available opportunity, and Applicant respectfully requests that these amendments be entered in the application under 37 C.F.R. § 1.116(b).

Rejection under 35 U.S.C. § 112, First Paragraph

Claims 67-71, 73-92 and 94 stand rejected under 35 U.S.C. § 112, first paragraph, on the grounds that the specification, as originally filed, does not provide support for the invention as now claimed. This rejection was overcome in part by the Amendment filed May 12, 1994, as indicated in an Advisory Action dated June 9, 1994. Specifically the rejection based on "substantially free" was indicated to be overcome, but the rejection based on "triglyceride" was not.

The triglyceride nature of the microbial oils used in the claimed method to prepare the recited oil blends was fully disclosed in the applications incorporated into the originally filed application by reference. By the present amendment, this material is now included in the specification of the present application. The remaining rejection under 35 U.S.C. § 112, first paragraph, is therefore overcome by the present amendment to the specification, and Applicant respectfully requests that the rejection of claims 67-71, 73-86, 92 and 94 under 35 U.S.C. § 112, first paragraph, be withdrawn.

Rejection under 35 U.S.C. § 103

Claims 67-71 and 73-94 stand rejected under 35 U.S.C. § 103 over Jap. Pat. Appl. No. 196,255 to Suntori, and Long, WO89/00606, in view of Clandinin, et al., and Traitler, et al. In the Advisory Action dated June 9, 1994, it was indicated that claims 67-71, 73-75 and 77-86 would be allowable if limited to "consisting of" instead of "comprising". The present amendment is submitted to comply with the spirit of the Advisory Action.

Claims 67-71, 73-75 and 77-86 are drawn to compositions containing relatively high amounts of DHA and ARA and relatively low amounts of EPA, and to methods of making such compositions by blending microbial oils that are individually high in ARA while low in EPA or high in DHA while low in EPA. The critical characteristic of oil blends prepared according to the present invention is the ratio of ARA and DHA to EPA, and the microbial oils taught in the subject application are essential to achieving the claimed ratio. Applicant understands the Advisory Action to indicate that the "comprising" claims prior to the present amendment may read on compositions blended from an oil containing a high amount of EPA in addition to the ARA- and DHA-enriched oils of the present invention. Such compositions could have high EPA levels, contrary to the oil blends taught in the specification which are distinguished from the prior art by the low EPA level.

On the other hand, diluting the blend with a third oil which has none of the recited fatty acids will not affect the ratios between these fatty acids, so such a diluted oil composition retains the essential characteristics which distinguish the present invention from the prior art. Therefore, claims which read on oil blends consisting of ARA- and DHA-enriched microbial oils diluted with a third oil having no ARA, DHA or EPA are novel and non-obvious over the prior art to the same extent as an oil blend consisting only of the two microbial oils, which were

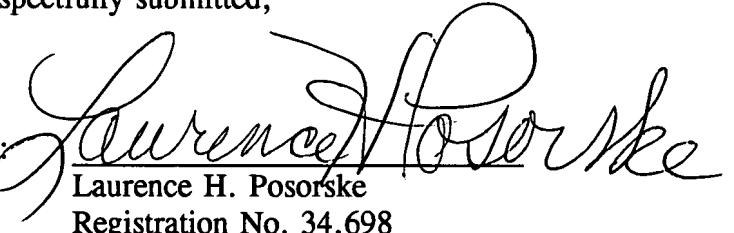
acknowledged to be patentable in the Advisory Action. In order to distinguish over the cited art, the claims are amended herein to point out that the claimed compositions consist essentially of the ARA- and DHA-enriched oils used in the blend according to this invention and to clearly recite the ratios between ARA, DHA and EPA which characterize the claimed compositions.

Applicant submits that the amended claims 67-71, 73-75 and 77-86, reciting the essential nature of the microbial oils and further reciting the ratios of ARA, DHA, and EPA, are clearly distinguishable over the cited art, and therefore these amended claims are equally as allowable as the "consisting" claims indicated allowable in the Advisory Action. Claims 76 and 92-94 are similarly amended herein to recite the essential nature of the microbial oils and the ratios of ARA, DHA, and EPA, and Applicant submits that these claims are also allowable, on the same grounds as the "consisting" claims indicated to be allowable by the Advisory Action. Applicant therefore respectfully requests that the rejection of claims 67-71, 73-86, and 92-93 under 35 U.S.C. § 103 be withdrawn.

It is respectfully submitted that the application is now in condition for allowance and early notice to that effect is requested. Should the Examiner feel that any issues remain unresolved, Applicant respectfully requests that the Examiner contact the undersigned attorney to discuss how they may be addressed.

Respectfully submitted,

By:



Laurence H. Posorske

Registration No. 34,698

Banner, Birch, McKie & Beckett
1001 G Street, N.W.
Washington, D.C. 20001
PHONE: (202) 508-9100; FAX: (202) 508-9299
LHP/sl